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OFFICE OF THE  
EXECUTIVE SECRETARY

April 18, 2002

Mr. K. David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

*RE: Docket No. 00-00544, Generic Docket to establish UNE prices  
for line sharing per FCC 99-355, and riser cable and terminating  
wire as ordered in TRA docket 98-00123.*

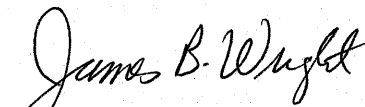
Sprint Petition for Reconsideration and Clarification

Dear Mr. Waddell:

Enclosed for filing are an original and thirteen copies of the United Telephone-Southeast, Inc. and Sprint Communications Company L.P. joint Petition for Reconsideration and Clarification of the Authority's April 3, 2002 Order issued in the above case.

Please contact me if you have any questions.

Sincerely,

  
James B. Wright

Enclosure

cc: Laura Sykora  
Kaye Odum  
Whitney Malone  
Tom Sokol  
Parties of Record (w/enclosure)

POSTED  
4/18/02

CERTIFICATE OF SERVICE

Line Sharing UNE (Docket No. 00-00544)

The undersigned certifies that on April 18, 2002, Sprint's Petition for Reconsideration and Clarification was served upon the following parties of record by hand-delivery, by fax or by placing a copy of the same in the United States Mail postage prepaid and addressed as follows:

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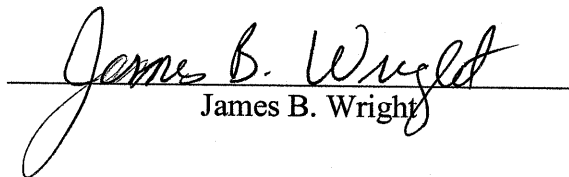
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James B. Wright

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**IN RE:**

**GENERIC DOCKET TO ESTABLISH  
UNE PRICES FOR LINE SHARING  
PER FCC 99-355, AND RISER CABLE  
AND TERMINATING WIRE AS  
ORDERED IN TRA DOCKET 98-00123**

**DOCKET NO. 00-00544**

**UNITED TELEPHONE – SOUTHEAST, INC., AND  
SPRINT COMMUNICATIONS COMPANY, L.P.  
JOINT PETITION FOR RECONSIDERATION AND CLARIFICATION**

The Tennessee Regulatory Authority (“TRA”) issued its First Initial Order (“Order”) in this docket on April 3, 2002. The above named companies (hereinafter “Sprint”) file this Petition asking the TRA to reconsider and/or clarify the following issues.

*Incumbent LEC Provided Splitters: Issues 8 and 10.* The TRA’s Order requires incumbent local exchange carriers (ILECs) to provide competitive local exchange carriers (CLECs) with line splitters, in both line sharing and line splitting situations, in a menu of options. While allowing CLECs the option of owning and maintaining their own line splitters, the TRA also gives CLECs the options: (1) of requiring ILECs to own/maintain line splitters for CLECs’ use, and (2) of requiring ILECs to maintain line splitters owned by CLECs. Where CLECs choose to have the incumbent own and maintain the line splitter, the TRA further ordered ILECs to offer CLECs line splitters in increments of ninety-six (96), twenty-four (24) or one-at-a-time. Sprint believes this portion of the

TRA's decision is based upon substantial legal errors.

The TRA acknowledges in its Order that the Federal Communications Commission's (FCC) December 9, 1999 *Fourth Report and Order* in Docket No. 96-98 ("Line Sharing Order") did not mandate that ILECs provide CLECs line splitters. The TRA's Order further acknowledges that the FCC's January 19, 2001 *Fourth Report and Order on Reconsideration* in Docket No. 96-98 ("Line Splitting Order") left the issue for further consideration. Nevertheless, the TRA decided that federal and state "nondiscriminatory provisions" compelled it to require that ILECs provide line splitters to CLECs. The TRA's Order, at footnote 70, cites §251(c) of the Communications Act, Tenn. Code Ann. §65-4-124(a), and 47 C.F.R. §51.311(a) as the basis for its decision. The TRA stated as a given that ILECs provide their own "data affiliates" line splitters and will thus favor such affiliates to the detriment of CLECs if not otherwise required to provide line splitters to competitors.

The FCC has never found that line splitters are an unbundled network element. The FCC's Line Sharing Order clearly provides that "incumbent LECs must either provide splitters or allow competitive LECs to purchase comparable splitters as part of the new unbundled network element." *See* Line Sharing Order at ¶146 (emphasis added). In addition, the FCC's rules provide that "the incumbent LEC may maintain control over the loop and splitter equipment and functions...." *See* 47 C.F.R. §51.319(h)(4) (emphasis added). The words "or" and "may" indicate that ILECs have a choice of either purchasing and installing a line splitter and then leasing it to the CLEC or allowing CLECs to purchase and install their own line splitters. Indeed, the discussion in the Line Sharing Order at ¶76-79 indicates that some ILECs requested the authority to provide line

splitters to CLECs because of concerns about running their voice services through CLEC facilities and that this is the only reason the FCC addressed the issue.

In order for the TRA to impose the requirement on ILECs to provide CLECs with line splitters, then it must find line splitters to be an unbundled network element after conducting a necessary and impair analysis. However, the TRA's Order cites to inapplicable legal authority and makes none of the necessary findings whereby this might be accomplished. Even if the TRA would have used the correct legal standard, the factual record in this docket cannot support its present conclusion.

The TRA's Order cites generally to §251(c) of the Communications Act. Subsection (c)(3) indeed requires ILECs to provide nondiscriminatory access network elements. By citing to §251(c), the TRA's Order presumes that a line splitter is in fact a network element. As explained above, the FCC has made no such determination. While the FCC's November 5, 1999 *Third Report and Order* in CC Docket No. 96-98 ("UNE Remand Order") has determined that states may on their own add to the FCC's national list of network elements, the states must abide by the necessary and impair requirements of §251(d)(2) and the FCC's national policy framework as set out in 47 C.F.R. §51.317. See UNE Remand Order at ¶153-161.

These requirements are something more than mere "nondiscriminatory provisions" and instead call for a more complex balancing of CLECs needs versus alternatives to the ILECs network. The TRA's Order includes no such analysis. Since a CLEC can install its own line splitter in an ILEC's common area or collocate its own line splitter (next to its DSLAM which it in any event must self-provision) just as easily as an ILEC can, the TRA could not have successfully applied the Communications Act's

impairment standard to line splitters in the first place.

The TRA's Order also cites to Tenn. Code Ann. §65-4-124(a); however, the state statutory provision is preempted by federal supremacy in this instance. The cite to 47 C.F.R. §51.311(a) is also misplaced given the rule assumes line splitters are network elements, which they are not.

Additionally, Sprint notes that it does not provide ADSL services through a "data affiliate". Sprint is an incumbent local exchange company that provides ADSL services to customers within its incumbent LEC territory; however, it does so directly and not through an affiliate. BellSouth also does not provide ADSL services through a data affiliate -- a fact recited by the TRA's Order in discussing issue 15 at page 35-36.

The TRA should reexamine its decision to require ILEC owned/maintained line splitters to be provided to CLECs. While BellSouth and other ILECs may have volunteered to provide line splitters to CLECs, Sprint has chosen not to do so. The TRA should not require Sprint to provide line splitters to CLECs without a proper finding that line splitters are an unbundled network element.

*Shelf versus Port-At-A-Time Line Splitters: Issue 11(2)*<sup>1</sup>. Sprint believes shelf-at-a-time provisioning is the least cost, most efficient way of deploying line splitters and therefore most in conformance with TELRIC standards. This is the method Sprint uses to provision its own line splitters. Shelf-at-a-time provisioning means that every port on the line splitter is hard wired to a corresponding port on the DSLAM. This is done in a single

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<sup>1</sup> Granting Sprint's petition for reconsideration on Issues 8 and 10 necessarily moots Sprint's motion on this issue.

engineering and installation effort. Conversely, port-at-a-time provisioning requires every line splitter and DSLAM port to be wired together via the main distribution frame (MDF). The port-at-a-time method entails using valuable space on Sprint's MDF for added terminations and jumpers, individualized engineering and installation efforts, extra cable runs plus new OSS systems to keep track of splitter/DSLAM port assignments.

Sprint's cost studies may show port-at-a-time to be economically unfeasible and thus render the issue moot; however, Sprint still asks the TRA to reconsider the issue and only require shelf-at-a-time provisioning. The substantial network inefficiencies created by port-at-a-time provisioning outweigh any benefits offered to competitive LECs in terms of marketing flexibility.

*Sprint Splitters to be Adjacent to MDF: Issue 11(1, 3 & 4).*<sup>2</sup> The TRA's Order at page 28, requires BellSouth to mount its ILEC owned/maintained line splitters adjacent to or within 100 feet of the main distribution frame (MDF) whenever technically feasible. While acknowledging Sprint's cost study assumes CLEC owned line splitters placed in common areas average 95 feet away from the MDF, the TRA orders Sprint to mount its CLEC owned/maintained line splitters "adjacent" to its MDF whenever technically feasible. The TRA further orders both BellSouth and Sprint to submit new cost studies which include all splitter placement options.

Sprint further states any Sprint-owned line splitters it provides for CLEC use will be placed in the same common areas that Sprint places CLEC owned line splitters as well

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<sup>2</sup> Granting Sprint's petition for reconsideration on Issues 8 and 10 necessarily moots Sprint's motion on this issue.

as Sprint's own line splitters for its retail customers. These common areas continue to average 95 feet away from its main distribution frame. Sprint has located and will in the future locate its common areas as adjacent to its MDF as technically feasible given already placed equipment and the need to reserve adequate space for MDF expansion. Sprint's cost studies already place the common areas an average of five (5) feet closer to its MDFs than what the TRA ordered of BellSouth. Therefore, Sprint interprets, and asks the TRA to clarify, that the TRA's Order does not require Sprint to place or price its ILEC owned/maintained line splitters anymore "adjacent" to its MDF than BellSouth or what Sprint has already established for itself or CLEC owned splitters.

*Bantum Test Jacks and Mechanized Loop Testing: Issue 12(4).* In instances where the incumbent LEC line splitters are provided, the TRA's Order requires BellSouth and Sprint to offer CLECs the option of purchasing a bantum test jack and mechanized loop testing. Sprint does not currently use bantum test jacks itself or offer them to CLECs. Ironically enough, the CLECs in this proceeding have denounced BellSouth's inclusion of bantum test jacks as providing no benefit and only serving to inflate costs. See Post hearing Brief of the Data Coalition at 27. Sprint thus seeks clarification of whether it must provide a specific test that both itself and CLECs do not wish to provide or have provided.

Also, by mechanized loop testing, Sprint assumes the TRA to mean mechanized wideband testing. Sprint does not currently have mechanized wideband testing available for itself or others and therefore Sprint's provisioning is not technically feasible.



Sprint Work Times: Issue 13, 5(3 & 4). In its Order the TRA found with respect to Issue 5, at page 16, that Sprint used estimated work times for “many” tasks and failed to specify how the figures were calculated for “some” of the tasks. The TRA also found that Sprint’s work times for “splitter engineering and installation” tasks were inflated and cite page 19 in Sprint’s cost study. No other party filed alternative proposals for Sprint’s work times, and the TRA’s rulings in Issue 5 order Sprint to use its proposed work times in the interim. However, at Issue 13 the TRA states that Sprint’s nonrecurring charges for cross connects and jumpers associated with competitive LEC owned splitter installation “will be reduced by the work time adjustments adopted herein.”

Sprint has reviewed the TRA’s statement that its “splitter engineering and installation” cost is inflated and seeks clarification thereof. The page in Sprint’s cost study the Order cites to is for cable racking and not “splitter engineering and installation”. It should also be noted that the stated costs are for an entire cable rack that will be shared by more than one cable, and this is so stated in the study.

In addition, Sprint needs clarification regarding which Sprint work times the TRA believes to be “estimated” and where the calculation of figures was not adequately specified. Sprint similarly seeks clarification with respect to the statement in Issue 13, page 30, as it sees no place in the Order where any work time reductions are specified for Sprint.

Provisioning Intervals: Issue 15. The TRA’s Order requires ILECs to provision the high frequency portion of the loop in three (3) business days when no conditioning is required and five (5) business days when conditioning is required. When more than six

(6) lines are being ordered at the same time at the same end-user location, the respective times are expanded to five (5) and ten (10) business days. When more than fourteen (14) lines are so ordered, the TRA left it to the parties to negotiate an interval.

The Order states that it is important that neither BellSouth's nor Sprint's data affiliate enjoy preferential treatment as compared to CLEC data providers.<sup>3</sup> Sprint believes the opposite of the TRA's statement also holds true, which is that CLEC data providers should not enjoy preferential treatment as compared to Sprint's retail customers. Sprint contends that the standard the TRA should pursue in this matter is parity in wholesale and retail provisioning as required by the FCC's rules. See 47 C.F.R. §51.313(b).<sup>4</sup>

In its Order the TRA admittedly applied BellSouth's provisioning intervals to all ILECs. The TRA imposed BellSouth's standard on Sprint in spite of Sprint's answering in an August 6, 2001 TRA data request that Sprint has an internal goal of provisioning the high frequency portion of the loop in five (5) and ten (10) days, without and with conditioning, respectively. At this point, Sprint has stepped up its internal goal and actual provisioning of the high frequency portion of the loop to three (3) days when no conditioning is required, regardless of the order being wholesale or retail. However, Sprint cannot meet the TRA's requirement for five (5) days for either itself or others and cannot track the distinctions between 1-5, 6-14 and 14+ lines at the same end-user

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<sup>3</sup> As noted above, Sprint does not provision its retail DSL services through a "data affiliate" but does so directly.

<sup>4</sup> The rule provides that "[w]here applicable, the terms and conditions pursuant to which an incumbent LEC offers to provide access to unbundled network elements, including but not limited to, the time within which the incumbent LEC provisions such access to unbundled network elements, shall, at a minimum, be no less favorable to the requesting carrier than the terms and conditions under which the incumbent LEC provides such elements to itself."

location. Sprint asks the TRA to simply require Sprint to provision the high frequency portion of the loop for wholesale customers in parity with its own retail customers.

OSS Line Share Upgrade: Issue 17. The TRA's Order approves Sprint's cost study and method of recovery for line sharing related operator support systems (OSS) upgrades. Although approved, Sprint advises that it has indefinitely placed on hold the line share programming upgrade to its OSS due to minimal line sharing demand. Sprint has not charged CLECs the monthly OSS cost recovery charge and will not begin until it actually incurs OSS upgrade costs.

Electronic Loop Make-Up Information: Issue 18(1, 2 & 3). The TRA's Order requires that ILECs provide both manual and electronic loop-makeup information and orders Sprint to submit a cost for electronic as well as manual loop-makeup information. Sprint does not have electronic loop makeup capabilities either for itself or CLECs and that the request is at present technically infeasible.

The TRA's order also requires Sprint to replace estimated times its employees spend providing loop makeup information with actual times. Although Sprint's cost studies at page five (5) column D have a label that includes the word "estimate", Sprint represents that its cost study in fact uses actual times and not estimated times.

Dual Purpose Line Card: Issue 20(1&2). The TRA's order requires ILECs to install for CLECs' use and to provide, on a nondiscriminatory basis, dual-purpose line cards (where splitter and DSLAM functions are incorporated into a single DLC line card).

Sprint believes the TRA's order is premature and asks the TRA to transfer the whole issue to its *Generic Docket to Consider Technology Advances*, Docket No. 01-00339 for further study. At present, Sprint is testing several vendors' dual-purpose line cards, but has not released any single card for standard deployment and does not foresee a date certain when this will occur. This situation makes it impossible for Sprint to conduct and submit a meaningful cost study by May 3, 2002. Sprint also has concerns regarding the specific terms and conditions under which ILECs might be required to "install" dual-purpose line cards for CLECs' use.

Moreover, Sprint does not believe that simply installing a dual-purpose line card in a DLC solves the problem at issue. The data on the high frequency portion of the copper loop will reach the DLC and via the dual-purpose line card will be sent over fiber to the central office. However, once the data reaches the central office, there must be an ATM switch present if the data is to ultimately reach its destination. The FCC has generally recognized the difficulties CLECs face with line sharing and line splitting when fiber has been deployed in the loop. The FCC has specifically mentioned the dual-purpose line card solution in a notice of proposed rulemaking addressing the general issue. Of particular concern to the FCC, however, is whether the dual-purpose line card solution requires modification of its current packet switching unbundling rule. See Line Splitting Order at ¶55-64.

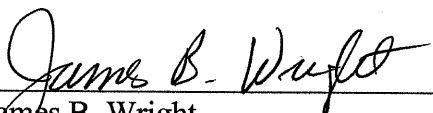
These issues were addressed minimally or not at all during the evidentiary phase of the present proceeding. This is evidenced by the TRA's Order containing only selected quotes from the FCC's Line Splitting Order as the basis for its decision. Thus, transferring the issue to the TRA's Advanced Technologies docket to further resolve

these issues and pending further experience with the technology is warranted.

Inside Wire: Issue 22(1). Sprint's inside wire cost study proposed developing non-recurring charges on a site-specific basis due to inherent variabilities. The TRA's Order acknowledges that each location may be unique but still believes Sprint is required to present forward-looking cost-studies based on past inside wire expenses and projected future costs. The continuing problem Sprint encounters is that it has no experience with unbundling the inside wire sub-loop and nothing to draw on as far as past inside wire non-recurring expenses. Sprint emphasizes again the fact that variability is a key factor and asks the TRA to reconsider its decision requiring Sprint to complete these cost studies.

Respectfully Submitted,

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SPRINT COMMUNICATIONS COMPANY, L.P.

  
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